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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,953	02/22/2002	William J. Hennen	2820-4428.2US	6427
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TRASK BRITT				
P.O. BOX 2550				
SALT LAKE CITY, UT 84110				
EXAMINER				
CHEN, STACY BROWN				
ART UNIT		PAPER NUMBER		
1648				
NOTIFICATION DATE		DELIVERY MODE		
01/13/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

Office Action Summary

Application No.

10/081,953

Applicant(s)

HENNEN ET AL.

Examiner

Stacy B. Chen

Art Unit

1648

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's submission filed October 31, 2008 has been entered. Claims 1-16 and 18-23 are pending and under examination.

Response to Amendment

2. The following rejections are withdrawn:
 - The rejection of claims 1, 2, 5, 7, 8, 10-13, 16 and 18-22 under 35 U.S.C. 103(a) as being unpatentable over Klesius *et al.* (*Poultry Science*, 1984, 63:1333-1337, "Klesius") in view of Rozzo *et al.* (*Molecular Immunology*, 1992, 29(2):167-182, "Rozzo") is withdrawn in view of Applicant's amendment requiring that extract comprise egg-specific proteins in addition to transfer factor. Note that this rejection may be reinstated if Applicant's remove the subject matter in question (new matter, *i.e.* "egg-specific proteins").
 - The rejection of claims 1-16 and 18-23 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement (with regard to the transitional phrase "consisting essentially of"), is withdrawn in view of Applicant's amendment.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

(New Rejection) Claims 1-16 and 18-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is new matter rejection.

The claims now require that the egg extract (that is administered to the treated animal) consist of transfer factor and egg-specific proteins. The specification does not literally disclose "egg-specific proteins". Applicant points to paragraph [0043] for support of this limitation.

Paragraph [0043] is reproduced below:

With reference to FIG. 3, after non-mammalian source 10 or non-mammalian eggs 14 that were directly exposed to one or more antigenic agents 12 have been given an adequate opportunity to elicit a secondary, or delayed-type hypersensitivity, immune response to antigenic agents 12, eggs 14 are collected. The yolks 16 and whites 18 of eggs 14 are then separated from one another, and various filtration processes are conducted on yolks 16 to obtain a water soluble fraction 20 thereof that includes transfer factor. Larger molecular weight proteins, such as antibodies, may also be removed from water soluble fraction 20 of yolks 16 by known processes, such as by filtering on the basis of molecular weight or by causing these larger molecular weight proteins to precipitate out of solution (e.g., in cold ethyl alcohol), then removing the precipitate 21 from water soluble fraction 20 (e.g., by filtration) to provide a substantially antibody-free, transfer factor-containing solution 22. Alternatively, the yolks 16 and whites 18 need not be separated.

This disclosure does not appear to appreciate the presence of egg-specific proteins, although it may be implied that there are proteins present in the fraction in addition to transfer factor when following the process of Figure 3. However, the specification does not explain or appreciate what egg-specific proteins are present in the recovered fraction. Clarification and correction are required.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-16 and 18-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims now require that the egg extract (that is administered to the treated animal) consist of transfer factor and egg-specific proteins. The specification does not literally disclose "egg-specific proteins". A search through the specification does not reveal the recitation or definition of this term. This disclosure does not appear to appreciate the presence of egg-specific proteins, although it may be implied that there are proteins present in the fraction in addition to transfer factor when following the process outlined in Figure 3 (see paragraph [0043]). However, it is not clear what these egg-specific proteins are. Clarification and correction are required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-16 and 19-23 remain rejected under 35 U.S.C. 102(e) as being anticipated by

Dopson (PGPub 2002/0044942A1, "Dopson", published April 18, 2002, with priority to

provisional application 60/233,400, filed September 18, 2000), for reasons of record. Applicant indicates in the response filed June 4, 2008 and October 31, 2008 that an affidavit may be filed once all other issues in this application are resolved.

Conclusion

6. No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stacy B. Chen whose telephone number is 571-272-0896. The examiner can normally be reached on M-F (7:00-4:30), alternate Fridays off,. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Stacy B. Chen/
Primary Examiner, TC1600